

**COPY**

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U.S. DISTRICT COURT  
DISTRICT OF WYOMING

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITATION OIL & GAS CORP., and  
CITATION 1994 INVESTMENT LIMITED  
PARTNERSHIP,

Defendants.

Civil Action No. 09CV 003-B

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and makes the allegations set forth herein.

### **NATURE OF THE ACTION**

1. This is a civil action for civil penalties and injunctive relief brought under the authority of Sections 309(a)(3) and 309(b) and 311(b)(7)(E) and (C), 33 U.S.C. §§ 1311(a)(3) and 1311(b) and 1321(b)(7)(E) and (C), of the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 - 1387, as amended by the Oil Pollution Act of 1990 (“OPA”), against Citation Oil & Gas Corp. and Citation 1994 Investment Limited Partnership (the “Defendants”) for violations of Sections 301(a), 311(b)(3), and 311(j) of the CWA, 33 U.S.C. §§ 1311(a), 1321(b)(3), and 1321(j), arising from Defendants’ discharge of approximately 597 barrels of crude oil and produced water into the North Fork Powder River and onto the banks adjacent to that river from Defendants’ Cellers Ranch Unit in Johnson County, Wyoming and for Defendants’ failure to prepare and fully implement an adequate Spill Prevention Control and Countermeasures Plan (“SPCC Plan”) as required by 40 C.F.R. Part 112 and its sub-parts.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1331,

1345, and 1355.

3. Authority to bring this action is vested with the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the District of Wyoming pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the acts or omissions giving rise to the claims alleged herein occurred in this district and because Defendants do business in this district.

5. Notice of commencement of this action has been given to the State of Wyoming pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

#### **DEFENDANTS**

6. Defendant, Citation Oil & Gas Corp. ("Citation") is a Delaware corporation incorporated in 1981 and authorized to do business in the State of Wyoming since 1982.

7. Defendant Citation 1994 Investment Limited Partnership ("Citation 1994") is a Texas Limited Partnership.

8. At all times material to this complaint, Defendants collectively owned a 99.57056% interest in the Cellers Ranch Unit.

9. At all times material to this complaint, Defendant Citation was the entity responsible for the operation of the Cellers Ranch Unit.

## **STATUTORY BACKGROUND**

### **CWA Prohibition of Discharges of Oil**

10. Crude oil, and oil and produced water mixes, are “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.

11. Crude oil, oil and produced water mixes, and produced water are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.”

13. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), as amended by Executive Order 12418, 48 Fed. Reg. 28891 (May 10, 1983), has determined by regulation certain quantities of oil that may be harmful to the public health or welfare or environment of the United States. For purposes of Section 311(b)(4) of the CWA, 40 C.F.R. § 110.3 defines harmful quantities as discharges of oil that “[v]iolate applicable water quality standards,” or “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

14. Section 301(a) of CWA, 33 U.S.C. § 1311(a), prohibits the unauthorized discharge of any pollutant, including crude oil, produced water mixes, and produced water, by

any person. Pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12), “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source.”

15. Section 309(a)(3), 33 U.S.C. § 1319(a)(3), authorizes the Administrator to bring a civil action in accordance with subsection (b) “[w]henever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title.” Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section.

16. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004), a person is subject to an adjusted civil penalty up to \$32,500 per day for each violation of Section 301(a), 33 U.S.C. § 1311(a).

17. “The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, . . . or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . , in such quantities as may be harmful . . . , is prohibited . . . .” 33 U.S.C. § 1321(b)(3).

18. An action to impose a civil penalty for violations of Section 311(b)(3), 33 U.S.C.A. § 1321(b)(3), may be brought in the district court of the United States for the district in

which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty. 33 U.S.C. § 1321(b)(7)(E).

19. With respect to unauthorized discharges of oil prohibited under Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), as amended by OPA, subjects a violator to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged. Pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), and 40 C.F.R. § 19.4, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004), for each violation occurring on or after March 15, 2004, a person is subject to an adjusted civil penalty up to \$32,500 per day or \$1,100 per barrel of oil for each violation.

#### **Spill Prevention Control and Countermeasure Requirements**

20. Pursuant to Section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), the President was authorized, among other things, to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.” By Executive Order No. 11548, 35 Fed. Reg. 11,677 (July 20, 1970), and Section 2(b)(1) of Executive Order No. 12777, 56 Fed. Reg. 54,757 (Oct. 18, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations for non-transportation-related onshore facilities which are found at 40 C.F.R. Part 112.

21. The Spill Prevention Control and Countermeasure (“SPCC”) regulations at 40 C.F.R. Part 112, promulgated by EPA pursuant to Section 311(j)(1)(C) and (j)(5), 33 U.S.C. § 1321(j)(1)(C), establish “procedures, methods and equipment, and other requirements for equipment to prevent discharges of oil,” and to “contain such discharges,” 33 U.S.C. § 1321(j)(1)(C), from onshore facilities into or upon the navigable waters of the United States or adjoining shorelines . . . .” 40 C.F.R. §112.1(a)(1).

22. The SPCC regulations apply to owners and/or operators of onshore facilities engaged in drilling, producing, gathering, storing, processing, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be “harmful to the public health or welfare or the environment,” as defined by 40 C.F.R. § 110.3, “into or upon the navigable waters of the United States or adjoining shorelines.” 40 C.F.R. § 112.1(b).

23. The owner or operator of an SPCC-regulated facility that began operations before January 10, 1974, shall have prepared a written SPCC plan not later than July 10, 1974, and have fully implemented a written SPCC plan not later than January 10, 1975. 40 C.F.R. § 112.3(a) (2002). The owner or operator of an SPCC-regulated facility that began operations between January 10, 1974, and February 16, 2002, shall have prepared an SPCC plan not later than six months after the date the facility began operations and, generally, have fully implemented an SPCC plan not later than one year after the date the facility began operations. 40 C.F.R. §

112.3(b) (2002).

24. Two regulatory extensions to the SPCC requirements in 40 C.F.R. § 112.3(a) and (b) were granted. First, for persons who had existing plans, the deadlines for plan revision to comply with any new rule requirements were extended to February 17, 2006 and the deadline for plan implementation of any revisions was extended to August 18, 2006. 69 Fed. Reg. 48,794 (Aug. 11, 2004). The second extension for new rule requirements for this same class of persons further postponed SPCC plan revisions and implementation of those revisions until October 31, 2007. 71 Fed. Reg. 8,462 (Feb. 17, 2006).

25. For plan preparation and implementation violations preceding August 17, 2002, the preamble to the amended SPCC regulations for 40 C.F.R. § 112.3(a) notes that “[t]he owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject . . . to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.” 67 Fed. Reg. 47042, 47083 (July 17, 2002). Therefore, a person who owns or operates an onshore facility which was in operation on or before August 16, 2002 must immediately prepare and implement a plan meeting the requirements of 40 C.F.R. § 112.3(a) and (b) (2002).

26. The regulations which govern preparation and implementation of SPCC Plans for Defendant’s facility are set forth at 40 C.F.R. § 112.3, 112.5, 112.7, 112.9, 112.10, and 112.20(e).



27. Pursuant to Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C), of the CWA and 40 C.F.R. § 19.4, for violations of the SPCC regulations occurring before March 15, 2004, a person may be subject to an adjusted civil penalty up to \$27,500 per day. For each violation occurring after March 15, 2004, an adjusted civil penalty up to \$32,500 per day for each violation may apply. 69 Fed. Reg. 7121 (Feb. 13, 2004).

### **GENERAL ALLEGATIONS**

#### **Discharge of Oil**

28. Defendants have and are engaged in drilling, producing, gathering, storing, processing, transferring, distributing, using or consuming “oil,” as that term is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, at their non-transportation-related “facility,” as that term is defined in 40 C.F.R. § 112.2 and 40 C.F.R. Part 112, Appendix A (the November 24, 1971 Memorandum of Understanding Between the Secretary of Transportation and Administrator of the Environmental Protection Agency), in Wyoming.

29. Defendants’ Cellers Ranch onshore facility consists of approximately 20 production wells, a central tank battery, associated flowlines and gathering lines, and other related facilities.

30. The Cellers Ranch onshore facility is an oil production facility with an oil storage capacity of approximately 4,164 barrels (174,888 gallons).

31. For purposes of 40 C.F.R. § 112.1(d)(2)(ii), the Cellers Ranch onshore facility has an above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons of oil.

32. At all times material to the allegations herein, Defendant Citation was an “owner” and “operator” of an “onshore facility” as those terms are defined in Section 311(a)(6)(B) and (a)(10), 33 U.S.C. § 1321(a)(6)(B) and (a)(10) and 40 C.F.R. § 112.2.

33. At all times material to the allegations herein, Defendant Citation 1994 was an “owner” of an “onshore facility” as those terms are defined in Section 311(a)(6)(B) and (a)(10), 33 U.S.C. §1321(a)(6)(B) and (a)(10) and 40 C.F.R. § 112.2.

34. Defendants are “person[s]” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

35. On June 19, 2004, a buried flowline that carries crude oil and produced water from four of the Cellers Ranch onshore facility’s wells to the facility’s central tank battery ruptured.

36. Approximately 597 barrels of mixed crude oil and produced water migrated upward from the buried flowline through about seven feet of soil to the surface and then flowed downhill and to the North Fork Powder River.

37. The discharge occurred in SW SW section 13-T44N-R82W, Lat/Long N 43 46.65, W106 39.144, due to external corrosion of the bolts compressing the Victaulic transition

coupling on a 3" flowline that carries produced fluids (crude oil and produced water) from four wells within the Cellers Ranch Unit to the Unit central tank battery which is located in Section 24. The flowline is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

38. The crude oil and produced water entered the North Fork Powder River which varies from approximately 10 to 30 feet in width and 2 to 5 ft. in depth. At the time of the discharge, river flow was at approximately seasonal average flowrate.

39. The spill was discovered on June 19, 2004 by a rancher who notified the local authorities when he noticed oil on the North Fork Powder River that morning. The local authorities then notified the EPA, the Wyoming Department of Environmental Quality ("DEQ"), Bureau of Land Management and the Kaycee Fire Department.

40. River banks were partially coated with crude oil and reed type grasses hanging down into the water collected crude in eddy areas which tended to accumulate patches of oil. Oil was visible on the surface of the river.

41. Eighteen Canadian geese were found covered with oil on June 19, 2004; one mallard duck was found on June 21, 2004. Nine geese survived. A small number of beaver were also oil-coated.

42. The forward front of the oil spread was determined to be approximately four miles downstream from point-of-entry, at a location upstream of a site referred to as the Godley dam.

A hard boom was placed at the Godley dam as well as three sites upstream.

43. Vacuum trucks were deployed to the hard boom sites to begin the recovery of oil. Additionally a set of soft booms and a vacuum truck were set approximately seven miles downstream from point-of-entry as a stop gap measure in the event of (a) failure of the Godley boom or (b) traces of oil not detected from the air. The boom site seven miles downstream was referred to as the Christensen boom. A periodic trace of oil was noted at the Christensen boom.

44. Clean-up was essentially completed the evening of June 23, 2004 with the exception of three hard booms that were left in place as a precaution and pulled the morning of June 24, 2004. Although most of the oil was removed from the North Fork Powder River and its banks within the first 5 days after the release, as of June 30, 2004, an oil sheen was still visible on the river.

45. The North Fork Powder River, at and downstream of the point the spill entered the river, is a perennially flowing water.

46. The North Fork Powder River flows into the Middle Fork Powder River at which point the combined rivers become the Powder River. The Powder River then flows north into Montana where it intersects the Yellowstone River.

47. The Powder River enters the Yellowstone River at a point where the Yellowstone River is navigable in fact.

48. The North Fork Powder River is a “navigable water[ ]” within the meaning of

Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2

49. The discharge described in paragraphs 35 through 44, supra, were not authorized by permit or otherwise.

50. Absent appropriate action by Defendants, Defendants' operations in their Cellers Ranch onshore facility may in the future result in discharges of crude oil, crude oil and produced water, and produced water into the North Fork Powder River.

**Spill Prevention Control and Countermeasure**

51. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(C), and 40 C.F.R. § 112.1, Defendants, as the owners and/or operators of an SPCC-regulated facility are subject to the SPCC regulations described in paragraphs 20 - 27, supra.

52. Defendants and Defendants' predecessors began operating the Cellers Ranch onshore facility on or before August 16, 2002.

53. The SPCC regulations set forth at 40 C.F.R. Part 112 require any owner or operator of an on-shore facility that, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as that term is defined in 40 C.F.R. § 110.3, to provide proper prevention and containment equipment, including at a minimum, appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a "navigable waters or adjoining shorelines."

54. Defendants' existing SPCC plan was not prepared in accordance with 40 C.F.R.

§§ 112.7, 112.9, and/or 112.10 and had numerous deficiencies, including, but not limited to missing or inadequate provisions regarding: (a) discharge predictions (40 C.F.R. § 112.7(b)) which would describe anticipated failures and the appropriate responses; (b) statement of impracticability describing why secondary containment was impractical (40 C.F.R. § 112.7(d)) and providing a contingency plan under 40 C.F.R. § 112.7(d)(1) detailing timely, efficient, coordinated and effective action to minimize damage resulting from oil discharges spill controls in the absence of secondary containment; (c) designation of person(s) responsible for spill personnel, training and prevention (40 C.F.R. § 112.7(f)(2)); (d) tank capacity, overflow equalizing lines, vacuum protection or high level sensors and alarms (40 C.F.R. § 112.9(c)(1 - 4)); inspection of salt water disposal facilities (40 C.F.R. § 112.9 (d)(2)); and (e) discussion of drilling and workover facilities (40 C.F.R. § 112.10).

55. The deficiencies identified in paragraph 54, supra, demonstrate that the Defendants have failed to timely prepare an adequate SPCC plan in accordance with 40 C.F.R. §§ 112.3(b), 112.7, 112.9, and/or 112.10 for Defendants' Cellers Ranch onshore facility.

56. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), and 40 C.F.R. § 19.4, for violations discussed in Paragraphs 53 through 55 occurring before March 15, 2004, Defendants are liable for civil penalties of up to \$27,500 per day. For each violation occurring after March 15, 2004, Defendants are liable for an adjusted civil penalty up to \$32,500 per day for each violation. 69 Fed. Reg. 7121 (Feb. 13, 2004).

**FIRST CLAIM FOR RELIEF**  
(Discharges of Oil In Violation of the CWA)

57. Paragraphs 1 through 56 are re-alleged and incorporated by reference.

58. Defendants' unauthorized discharge of crude oil, mixed crude oil and produced water, described in paragraphs 35 through 44 supra, into waters of the United States and onto their adjoining shorelines in quantities which may be harmful to the public health or welfare or environment, constitute violations of Section 301(a) and Section 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3).

59. For the spill identified in Paragraphs 35 through 44, supra, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004), Defendants are subject to an adjusted civil penalty up to \$32,500 per day for each violation of Section 309(b), 33 U.S.C. § 1319(b). Alternatively, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), and 40 C.F.R. § 19.4, for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), Defendants are subject to a civil penalty in an amount up to \$32,500 per day, per violation or \$1,100 per barrel of oil discharged and are subject to appropriate relief pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a).

**SECOND CLAIM FOR RELIEF**

60. Paragraphs 1 through 59 are re-alleged and incorporated by reference.

61. Defendants' failure to prepare in writing a timely, adequate SPCC Plan in accordance with 40 C.F.R. §§ 112.7, 112.9, and/or 112.10 and Defendants' failure to fully

implement the SPCC Plan in violation of 40 C.F.R. § 112.3(a) and (b) (2002), as set forth in paragraphs 53 and 54, supra, subjects Defendants to a civil penalty in an amount up to \$32,500 per day, per violation pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C) and 40 C.F.R. § 19.4.

### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, the United States of America, respectfully requests that this Court enter judgment against Defendants for:

a. Civil penalties for violations of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a), in the amount of up to \$32,500 per day per violation for the June 19, 2004 discharge of crude oil, and mixed crude oil and produced water;

b. Alternatively, civil penalties for violations of Section 311(b) and (b)(3) of the CWA, 33 U.S.C. § 1321(b) and (b)(3), in the amount of up to \$32,500 per day per violation or up to \$1,100 per barrel of oil, for the June 19, 2004 discharge of crude oil, and mixed crude oil and produced water;

c. Impose civil penalties of up to \$32,500 per day per violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the SPCC regulations promulgated thereunder at 40 C.F.R. Part 112, as authorized under Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C);

d. Grant injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as may be necessary to prevent, detect and mitigate further discharges in violation of



Section 301(a) of the CWA, 33 U.S.C. § 1311(a);

e. Order Defendants to revise and implement their SPCC plan in accordance with the applicable regulatory requirements; and

f. Such other relief as this Court deems appropriate.

Dated: December 17<sup>th</sup>, 2008.

Respectfully submitted,

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Dated: January 7, 2009

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